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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/726,852

11/30/2000

Robert A. Cochran

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06/08/2009

HEWLETT PACKARD COMPANY
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FORT COLLINS, CO 80527-2400

EXAMINER

POLTORAK, PIOTR

ART UNIT

PAPER NUMBER

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte: ROBERT A. COCHRAN, GREGORY D. DOLKAS

Appeal No. 2008-003376
Application 09/726,852
Technology Center 2100

Mailed: [June 8, 2009]

Before DALE M. SHAW, *Chief Appeals Administrator*

ORDER REMANDING TO EXAMINER

This application was electronically received at the Board of Patent Appeals and Interferences April 15, 2008. A Docketing Notice was mailed and Appeal No. 2008-3376 was assigned on May 9, 2008. A review of the application has revealed that the application was not ready for an appeal. Accordingly, the application is herewith being remanded to the Examiner. The matter requiring attention is identified below

APPEAL BRIEF, SUMMARY OF CLAIMED SUBJECT MATTER

Appellant filed an Appeal Brief dated on February 27, 2006 and Reply Brief dated on December 13, 2007. The Appeal Brief is not in compliance with 37 C.F.R. § 41.37(c) effective September 13, 2004.

According to 37 C.F.R. § 41.37(c)(v), an Appeal Brief must include the following:

(v) *Summary Of Claimed Subject Matter.* A concise explanation of the subject matter defined in each of the independent claims involved in the appeal, which must refer to the specification by page and line number, and to the drawing, if any, by reference characters. For each independent claim involved in the appeal and for each dependent claim argued separately under the provisions of 37 CFR 41.37(c)(1)(vii), every means plus function and step plus function as permitted by 35 U.S.C. 112, sixth paragraph, must be identified and the structure, material, or acts described in the specification as corresponding to each claimed function must be set forth with reference to the specification by page and line number, and to the drawing, if any, by reference characters.

The “Summary of claimed subject matter” appearing on pages 3, 4 of the Appeal Brief filed on February 27, 2006 is deficient because it does not separately map independent claims 1 and 6 to the specification **by page and line number**. Correction is required.

MPEP § 1205.03 states in part:

(B) When the Office holds the brief to be defective solely due to appellant’s failure to provide a

summary of the claimed subject matter as required by 37 CFR 41.37(c)(1)(v), an entire new brief need not, and should not, be filed. Rather, a paper providing a summary of the claimed subject matter as required by 37 CFR 41.37(c)(1)(v) will suffice. Failure to timely respond to the Office's requirement will result in dismissal of the appeal. See MPEP § 1215.04 and § 711.02(b).

CONCLUSION

Accordingly, it is

ORDERED that this application be remanded to the Examiner to:

- 1) hold the Appeal Brief filed on February 27, 2006 defective, as required by 37 CFR § 41.37(d);
- 2) notify the Appellant to submit a “**paper**” which corrects the Appeal Brief's Summary of Claimed Subject Matter under 37 CFR §41.37(c)(1)(v);
- 3) acknowledge and consider any “**paper**” submitted by Appellant to correct the Appeal Brief;
- 4) for such further action as may be appropriate.

If there are any questions pertaining to this Order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

DMS/llw

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